

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

OCT 28 2 53 PM '93

DISPATCHED BY MM Docket No. 93-271
In the Matter of

Amendment of Section 73.606(b) RM-8345
Table of Allotments,
TV Broadcast Stations.
(Walla Walla, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 30, 1993; Released: October 28, 1993

Comment Date: December 20, 1993

Reply Comment Date: January 4, 1994

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Broad Spectrum Communications, Inc. ("petitioner"), proposing the substitution of VHF Channel 9+ for vacant UHF Channel 14- at Walla Walla, Washington, as its first local television broadcast service. Petitioner states that it will apply for the channel, if allotted.

2. In support of the proposal, petitioner states that Walla Walla in the rural southeast part of Washington and has a scattered population (26,478).¹ Petitioner alleges that it would be less expensive to operate a VHF television station than a UHF television station. Therefore, petitioner claims that it would be in the public interest to have a viable VHF television station in Walla Walla than have UHF Channel 14- remain fallow due to the anticipated costs of operation and reduced service area. Moreover, petitioner claims that Channel 14- is adjacent to land mobile communications and therefore would cause interference which would be costly to eliminate and would cause disruption to both services.

3. We believe the public interest would be served by proposing the substitute of Channel 9+ for vacant Channel 14- at Walla Walla, Washington, since it could provide the community with better service to a wider service area. An engineering analysis has determined that Channel 9+ can be substituted at Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.² Since Walla Walla is located within 400 kilometers (250 miles) of the U.S.-Canadian border, Canadian concurrence has been requested. Although the Commission has imposed a freeze on television allotments in certain areas, Walla Walla is not in one of the affected areas.³

4. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No.	Proposed
Walla Walla, Washington	14-		9+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 20, 1993**, and reply comments on or before **January 4, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Margaret L. Tobey
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Ave., N.W., Suite 400
Washington, D.C. 20036
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

¹ Population figure taken from the 1990 U.S. Census.

² The coordinates for Channel 9+ at Walla Walla are North Latitude 46-04-12 and West Longitude 118-19-48.

³ *See Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 2 Fed. Reg. 28346, July 29, 1987.

ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such

parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.